



## RESOLUTION No. 2011-2963

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### A RESOLUTION AUTHORIZING THE MAYOR TO AMEND THE EMPLOYMENT AGREEMENT WITH DANIEL J. DANICIC ON BEHALF OF THE CITY

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#### RECITALS:


1. The City Council appointed Daniel J. Danicic as the city manager on April 7, 2011, to be effective April 22, 2011.
2. After three years as city manager, Daniel J. Danicic has had three performance reviews during the month of April each respective year where the City Council has found the overall manager's performance fell between excellent and exceeds expectations.

#### THE CITY OF NEWBERG RESOLVES AS FOLLOWS:


1. The City Council authorizes the Mayor, on behalf of the city, to execute and do all other necessary acts to enter into an Employment Agreement with Daniel J. Danicic. Said agreement is attached as Exhibit "A" is hereby adopted and by this reference incorporated.
2. The City Council expresses its unanimous feeling that Daniel J. Danicic does an outstanding job and remains a viable part of the city.
3. The term of employment (Section 1) in the current employment agreement expires April 20, 2011, with an automatic renewal of one additional year.
4. The term of employment shall be modified as shown in the revised employment agreement, which is attached as Exhibit "A" and is hereby adopted and by this reference incorporated.
5. Section 3.A.: Compensation shall be modified to reflect the appropriate annual salary of the city manager as set by the city council in the adopted Fiscal Year 2011/2012 City Budget.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: August 2, 2011.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 1<sup>st</sup> day of August, 2011.

  
Norma I. Alley, City Recorder

**ATTEST** by the Mayor this 4<sup>th</sup> day of August, 2011.

  
Bob Andrews, Mayor

# **EMPLOYMENT AGREEMENT**

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**CITY OF NEWBERG**

**and**

**DANIEL J. DANICIC**

**Effective April 22, 2008**

***(with amendments that are effective***

***December 31, 2008 and April 21, 2011)***

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**AMENDED August 1, 2011,  
*Amendments are italicized & underlined & effective April 20, 2011***

**Employment Agreement**

**Between the**

**City of Newberg**

**and**

**Daniel J. Danicic, Newberg City Manager**

**Introduction**

As amended by the City Council on *August 1, 2011*, this amended Agreement, made and entered into this *4<sup>th</sup> day of August, 2011*, by and between the City of Newberg, a municipal corporation, (hereinafter called, Employer) and Daniel "Dan" J. Danicic, (hereinafter called, Employee an individual who has the education, training and experience in local government management).

**Section 1: Term and Employment**

- A. *This Agreement shall remain in full force in effect from April 20, 2011, until terminated by Employer or Employee as provided in Section 9, 10, or 11 of this Agreement.*
- B. The Employee shall serve at the will of Employer. In the event that Employee is terminated, as defined in Section 9 of this Agreement, Employee shall be paid for all salary and benefits accrued through the date of termination and, if applicable, all severance as set forth in Section 10 of this Agreement.
- C. If the Agreement is not renewed and the term expires, the Employee shall continue to be employed by the City subject to all compensation, benefits, and requirements of the Agreement, except that the Employee may be terminated at will and is not entitled to any severance pay.

**Section 2: Duties and Authority**

Employer agrees to employ Daniel J. Danicic as City Manager to perform the functions and duties specified in Section 34 of the City of Newberg Charter and to perform other legally permissible and proper duties and functions as assigned by the Employer.

### **Section 3: Compensation**

- A. Base Salary: Employer agrees to pay Employee an annual base salary of One Hundred Twenty Thousand Six Hundred Twelve Dollars (\$120,612.00) payable in installments at the same time that the other employees of Employer are paid.
- B. This Agreement shall be automatically amended to reflect any salary adjustments that are provided or required by Employer's compensation policies.
- C. Consideration shall be given on an annual basis to adjust compensation.

### **Section 4: Health, Disability and Life Insurance Benefits**

- A. Employer agrees to provide and to pay the premiums for health, hospitalization, surgical, vision, dental and comprehensive medical insurance for Employee and his dependents in the same manner as and equal to that which is provided to all other employees of the City of Newberg.
- B. Employer agrees to make required premium payments for Workers Compensation Insurance and long-term disability insurance for Employee in the same manner as for all other employees of the City of Newberg.
- C. Employer shall pay the amount of premium due for term life insurance in the amount of three times Employee's annual base salary, including all increases in the base salary during the life of this Agreement. Employee shall name the beneficiary of the life insurance policy.

### **Section 5: Vacation, Sick, and Administrative Leave**

- A. Employee is entitled to accrue all unused vacation and sick leave subject to the same limitations as other employees of the City of Newberg, and in the event Employee's employment is terminated, either voluntarily or involuntarily, Employee shall be compensated for all accrued vacation time, paid holidays, and unused administrative leave to the date of termination.
- B. Employee shall annually be credited with fifteen (15) days of administrative leave beginning July 1<sup>st</sup>, which cannot be carried over from fiscal year to fiscal year.
- C. Employee shall receive credit for thirteen (13) years length of service commencing the effective date of this Agreement. Employee shall accrue vacation at the higher years of service rate of 18 vacation days per year with standard vacation awards, as they correspond with length of service pursuant to the Vacation Benefit section of the Personnel Rules and Regulations.

### **Section 6: Automobile**

Employee shall furnish his own transportation for business purposes. The cost of such transportation shall be born by Employee. Employer shall reimburse Employee at the IRS standard mileage rate for any business use of the vehicle.

### **Section 7: Retirement**

Employer agrees to make all the appropriate contributions on Employee's behalf, for both Employer and Employee, into the PERS retirement system.

### **Section 8: General Business Expenses**

- A. Employer agrees to pay for professional dues and subscriptions of Employee necessary for continuation and full participation in national, regional, state, and local associations, and organizations necessary and desirable for Employee's continued professional participation, growth, and advancement, and for the good of Employer.
- B. Employer agrees to pay for travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions to adequately continue the professional development of Employee and to pursue necessary official functions for Employer, including but not limited to the ICMA Annual Conference, the League of Oregon Cities Annual Conference, and such other functions of national, regional, state, and local governmental groups and committees in which Employee serves as a member.
- C. Employer also agrees to pay for travel and subsistence expenses of Employee for short courses, institutes, and seminars that are necessary for Employee's professional development and for the good of Employer.
- D. Employer acknowledges the value of having Employee participate and be directly involved in local civic clubs or organizations. Accordingly, Employer shall pay for the reasonable membership fees and/or dues to enable Employee to become an active member in local civic clubs or organizations.
- E. Payment of any of the general business expenses identified in this Section shall be subject to approval through the City budget process.

### **Section 9: Suspension and Termination**

- A. Employer may suspend Employee with full pay and benefits at any time during the term of this Agreement.
- B. For the purpose of this agreement, termination shall occur when:
  - 1. The majority of the Council, as defined in the City of Newberg Charter, votes to terminate Employee at a duly authorized public meeting.

2. If the Employer, citizens or legislature acts to amend any provisions of the City of Newberg Charter or the Code of Newberg pertaining to the role, powers, duties, authority, responsibilities of Employee's position that substantially changes the form of government, Employee shall have the right to declare that such amendments constitute a termination. However, Employee may declare that such amendments constitute a termination only if Employee also reasonably declares that such amendments result in a material negative change to Employee in Employee's employment with Employer, such as the duties to be performed, the conditions under which the duties are to be performed, or the compensation to be received for employment with Employer.
3. If Employer reduces the base salary, compensation or any other financial benefit of Employee, unless it is applied in no greater percentage than the average reduction of all other employees, such action shall constitute a breach of this agreement and will be regarded as a termination.
4. If Employee resigns following an offer or suggestion by Employer, whether formal or informal, to accept resignation and such offer or suggestion is represented as being the will of the majority of the Council that the Employee resign, then the Employee may declare a termination as of the date of the offer or suggestion.
5. Breach of contract may be declared by either party with a thirty (30) day cure period for either Employee or Employer. Written notice of a breach of contract shall be provided in accordance with the provisions of Section 20, provided, however, a material breach of the contract by the employee which the employee fails to cure within the thirty (30) day period shall not be a termination for which severance pay shall be paid.

**Section 10: Severance**

- A. Severance shall be paid to Employee when employment is terminated as defined in Section 9.
- B. Employer shall provide a minimum severance payment equal to six (6) months salary at the current rate of pay, including the cost of health insurance. This severance shall be paid as a lump sum, unless otherwise agreed to by Employer and Employee and will be paid within 30 days of termination.
- C. Employee shall also be compensated for all accrued vacation time, paid holidays, and unused administrative leave.
- D. If Employee is terminated because of an indictment or charge of a felony, conviction of any felony or conviction of any misdemeanor involving moral turpitude or malfeasance in office, then Employer is not obligated to pay severance under this Section, provided, however, if the employee is not convicted on said indictment or charge within two years, severance pay shall be paid.

- E. Despite any contrary provision of this Section 10 or any other part of this Agreement, all severance under this Section 10 shall be paid only on or after the date Employee has a separation from service with the employer within the meaning of Treasury Regulation Section 1.409A-1(h), using none of the options in Treasury Regulation Section 1.409A-1(h), and no later than the last day of Employee's second taxable year following Employee's taxable year in which the separation from service occurs.

**Section 11: Resignation**

In the event that Employee voluntarily resigns his position with Employer, Employee shall provide a minimum of sixty days notice unless the parties agree otherwise. Employee may not use accrued vacation time during the sixty-day notice period.

**Section 12: Performance Evaluation**

- A. During the first year of this contract, the Employee shall receive a performance review between the first six (6) to eight (8) months.
- B. Employer shall annually review the performance of Employee subject to a process, form, criteria, and format for the evaluation, which shall be mutually agreed upon by Employer and Employee. The process at a minimum shall include the opportunity for both parties to: (1) prepare a written evaluation, (2) meet and discuss the evaluation, and (3) present a written summary of the evaluation results. The final written evaluation should be completed and delivered to Employee within fifteen days of the evaluation meeting.

**Section 13: Hours of Work**

It is recognized that Employee must devote a great deal of time outside the normal office hours on business for Employer, and to that end Employee shall be allowed to establish an appropriate work schedule.

**Section 14: Outside Activities**

The employment provided for by this Agreement shall be Employee's sole employment. Recognizing that certain outside consulting or teaching opportunities provide indirect benefits to Employer and the community, Employee may elect to accept limited teaching, consulting or other business opportunities with the approval of Employer and the understanding that such arrangements shall not constitute interference with nor a conflict of interest with his responsibilities under this Agreement.

**Section 15: Residency**

Employee shall maintain his residence within the corporate limits of the City of Newberg. Employer shall have the sole right to approve any exception to this requirement. Failure of Employee to observe this requirement is grounds for termination. Such termination is not subject to the payment of severance as provided for in Section 10 of this Agreement.



## **Section 16: Indemnification**

Beyond that required under Federal, State or Local Law, Employer shall defend, save harmless and indemnify Employee against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as City Manager or resulting from his exercise of judgment or discretion in connection with the performance of his duties or responsibilities, unless the act or omission involved willful or wanton conduct. Employee may request and Employer shall not unreasonably refuse to provide independent legal representation at Employer's expense. Legal representation, provided by Employer for Employee, shall extend until a final determination of the legal action including any appeals brought by either party. Employer shall indemnify Employee against any and all losses, damages, judgments, interest, settlements, fines, court costs and other reasonable costs and expenses of legal proceedings including attorneys fees, and any other liabilities incurred by, imposed upon, or suffered by Employee in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened, arising out of or in connection with the performance of his duties, unless the claim, action, suit or proceeding arises as a result of willful or wanton conduct. Any settlement of any claim must be made with prior approval of Employer in order for indemnification, as provided in this Section, to be available.

## **Section 17: Bonding**

Employer shall bear the full cost of any fidelity or other bonds required of Employee under any law or ordinance.

## **Section 18: Other Terms and Conditions of Employment**

- A. Employer may, upon agreement with Employee, fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City of Newberg Charter or any other law.
- B. Except as otherwise provided in this Agreement, Employee shall be entitled to the same level of benefits that are enjoyed by other employees as provided in the City of Newberg Charter, Code of Newberg, City of Newberg Personnel Rules and Regulations or by practice.
- C. Except as otherwise provided in Agreement, Employee is bound by the City of Newberg Personnel Rules and Regulations (Employee Manual).

## **Section 19: Notices**

Notice pursuant to this Agreement shall be given by depositing in the custody of the United States Postal Service, postage prepaid, addressed as follows:

- (1) EMPLOYER: Mayor and Council  
City of Newberg  
PO Box 970

Newberg, OR 97132  
(503) 537-1276

(2) EMPLOYEE: Daniel J. Danicic  
2516 E. 3rd Street  
Newberg, OR 97132  
(503) 476-7702

Alternatively, notice required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service.

**Section 20: General Provisions**

- A. Integration. This Agreement sets forth and establishes the entire understanding between Employer and Employee relating to the employment of Employee by Employer. Any prior agreements, discussions or representations by or between the parties are merged into and rendered null and void by this Agreement. The parties by mutual written agreement may amend any provision of this agreement during the life of this Agreement. Such amendments shall be incorporated into and made a part of this Agreement.
- B. Binding Effect. This Agreement shall be binding on Employer and Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.
- C. Effective Date. This Agreement shall become effective on April 21, 2011.
- D. Severability. The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both parties subsequent to the expungement or judicial modification of the invalid provision.

**IN WITNESS WHEREOF**, Employer has caused this Agreement to be signed and executed in its behalf by its Mayor and Employee has signed and executed this Agreement, both in duplicate, the day and year first above-written.

**CITY OF NEWBERG:**

**EMPLOYEE:**

|                    |             |                          |             |
|--------------------|-------------|--------------------------|-------------|
| by _____           |             | _____                    |             |
| <b>Bob Andrews</b> | <b>Date</b> | <b>Daniel J. Danicic</b> | <b>Date</b> |
| <b>Mayor</b>       |             | <b>City Manager</b>      |             |